

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
MIDDLE DIVISION**

KEITH EDMUND GAVIN,)	
)	
Petitioner,)	
)	
v.)	Case No. 4:16-cv-00273-KOB
)	
JEFFERSON S. DUNN,)	
Commissioner of the Alabama)	
Department of Corrections,)	
)	
Respondent.)	

VOLUME 40

State Court – Collateral Appeal Transcript

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Vol. 22 of 22

COURT OF CRIMINAL APPEALS NO. _____

CR-10-1313

APPEAL TO ALABAMA COURT OF CRIMINAL APPEALS

FROM

CIRCUIT COURT OF CHEROKEE **COUNTY, ALABAMA****CIRCUIT COURT NO** CC-98-61.60 & CC-98-62.60**CIRCUIT JUDGE** David A. Rains**Type of Conviction/ Order Appealed From:** _____Rule 32**Sentence Imposed:** _____**Defendant Indigent:** ☒ YES ☐ NO**KEITH EDMUND GAVIN****NAME OF APPELLANT**Stephen C. Jackson205-254-1037(Appellant's Attorney)(Telephone No.)1901 Sixth Avenue North, Suite 2400(Address)Birmingham Alabama 35203(City)(State)(Zip Code)**V.****STATE OF ALABAMA****NAME OF APPELLEE**(State represented by Attorney General)**NOTE: If municipal appeal, indicate above, and enter****name and address of municipal attorney below.**df(For Court of Criminal Appeals Use Only)

1 line of defense or called Keith Gavin to the
2 stand because he knew something, then the
3 State has every right to know that and to
4 present it as evidence. Again, this is a
5 Rule 32 petition. He is a petitioner. He
6 is suing the State in a quasi civil matter
7 and privileges for the most part go out the
8 window, especially when you're claiming that
9 you're actually innocent and that you can
10 prove it.

11 MS. WALKER: Your Honor, I don't
12 mean to cut off defense counsel, but I think
13 he has made a lot of misstatements there.
14 We are not presenting an actual innocence
15 defense. Mr. Webb did not present an
16 opinion that Mr. Gavin is actually innocent,
17 and some of these interview notes I'm sure
18 the State would like to see, but they can go
19 out and interview these people themselves.
20 All of these statements are going to be
21 hearsay. The only relevance they have is if
22 they have formed the basis for part of Mr.
23 Webb's opinions as expressed in his report
24 and as expressed in his testimony, and the
25 only ones that are relevant to that are the

1 ones that I've identified.

2 THE COURT: All right, I want you
3 to produce the following: The statements of
4 Ronald Baker, Tony Burch, Jim Duarte, Kim
5 Duarte, Keith Gavin. Tell me again who
6 Charles Richard Henry is.

7 MS. WALKER: He was one of the
8 gentlemen who was at the intersection at the
9 time of the incident.

10 THE COURT: Produce his statement.
11 Larry Twilley and Vickie Twilley.

12 MR. MAZE: I believe counsel had
13 said earlier that Sharon Meeks was --
14 because she was one of the persons in
15 Chattanooga who would have seen Mr. Meeks
16 when he came back.

17 THE COURT: You're right, Sharon
18 Meeks. Who are Charles Carter and Crystal
19 Carter?

20 MS. WALKER: They are relatives of
21 Dwayne Meeks.

22 THE COURT: And Lavaughn Carter,
23 another relative?

24 MS. WALKER: That's correct.

25 THE COURT: And Keith Clark is who?

1 MS. WALKER: He's a brother-in-law
2 of Keith Gavin. I believe he's Geanetta's
3 husband.

4 MR. MAZE: Your Honor, I think the
5 only other one that we might have a question
6 about is Roger Wells.

7 THE COURT: Yeah, now, Roger Wells
8 is deceased, if that's the Roger Wells that
9 used to be the police officer.

10 MS. WALKER: I would agree to
11 produce Roger Wells.

12 THE COURT: Pardon?

13 MS. WALKER: I'll agree to produce
14 the notes of the interview of Roger Wells.

15 MR. MAZE: If the rest are
16 relatives -- if counsel says the rest of
17 them are mitigation based and they're just
18 relatives, then we wouldn't ask for those.

19 MS. WALKER: I'll agree that they
20 are relatives. Mr. Meeks' relatives, such
21 as Charles Carter and Crystal Carter and
22 Lavaughn Carter I can't say were interviewed
23 for mitigation purposes.

24 MR. MAZE: If they were interviewed
25 for guilt phase purposes, then we would

1 request those.

2 THE COURT: The only ones I'm going
3 to require to be produced are the ones I've
4 said, Ronald Baker, Tony Burch, Jim Duarte,
5 Kim Duarte, Keith Gavin, Charles Richard
6 Henry, Sharon Meeks, Larry Phillip Twilley,
7 Vickie Twilley, Roger Wells.

8 MR. MAZE: Yes, sir.

9 MS. WALKER: Thank you, Your Honor.

10 THE COURT: Thank you. Now, when
11 can you get that done?

12 MS. WALKER: Today is Tuesday,
13 we'll start, we'll produce what we have by
14 the end of the week, and if there are
15 additional ones that we need to get from Mr.
16 Webb, it might spill over to next week, but
17 we'll produce them on a rolling basis before
18 the end of the next week. And, Your Honor,
19 am I correct in understanding that we're
20 just to produce them to the State, Your
21 Honor does not want copies?

22 THE COURT: I don't want them. If
23 the State wants to do anything with them,
24 they can file whatever they need to file.

25 MR. MAZE: Yes, sir.

1 THE COURT: Anything else we need
2 to do?

3 MR. MARSHALL: I don't believe so,
4 Your Honor.

5 MR. MAZE: The only thing from the
6 State is we again renew our objections to
7 the affidavits that we mentioned at the
8 beginning of the hearing and kind of
9 piggybacking off of counsel's statement of
10 about two minutes ago, they are hearsay and
11 shouldn't come in, so if they're hearsay one
12 way, then it should work both ways.

13 THE COURT: I'll take that under
14 consideration. Thank you. Anything else?

15 MR. MARSHALL: Not at this time,
16 Your Honor, no.

17 THE COURT: Thank you. Now, ones
18 you have gotten the Haney deposition, I
19 assume that you want to file something.

20 MR. MARSHALL: Well, I think it
21 probably behooves all of us to try to
22 summarize what we think the evidence has
23 shown and its legal implications. I do.
24 And then we'd be happy to argue it or to
25 brief it or if the Court prefers, both. I

1 know it's a lot of work, but there is a lot
2 of materials.

3 THE COURT: Well, I'm not going to
4 ask you to come back and orally argue it. I
5 think if once you have gotten the Haney
6 deposition, I think I'm going to give you
7 one more opportunity to present -- you can
8 submit the Haney deposition and any argument
9 that you want, written argument that you
10 want to make, about where you think this
11 case is and how it ought to be disposed of.

12 MR. MARSHALL: Sure. Right.

13 THE COURT: Call that whatever you
14 want to call it and then let the State
15 respond to it. But the Haney deposition
16 will come to me from the defendant.

17 MR. MARSHALL: Yes, Your Honor, it
18 will.

19 THE COURT: Okay. But you will
20 give it to me in its entirety, don't just
21 give me a page here and a page there and a
22 page somewhere else.

23 MR. MARSHALL: Well, I suspect if
24 we're going to write a brief, obviously, we
25 will talk about selected portions within the

1 brief, but obviously we'll produce the
2 entire transcript.

3 THE COURT: Exactly. Fine.

4 MR. MARSHALL: Which I think has
5 been the practice in this case so far. I
6 think all of the transcripts have been fully
7 provided to the Court.

8 MS. CASEY: The State provided
9 them.

10 MR. MARSHALL: Pardon me?

11 THE COURT: No, they haven't been.

12 MS. CASEY: We provided them
13 already. You provided exerts to your brief.

14 MR. MARSHALL: Okay, but the Court
15 has access to them now. The Court has
16 received --

17 THE COURT: Well, let's use an
18 example.

19 MR. MARSHALL: Arambasich, you have
20 the complete transcript of Tom Arambasich.
21 It may be that the State provided it.

22 THE COURT: Tell me where that is.

23 MR. MARSHALL: I believe it's in
24 the materials the State provided in
25 conjunction with its opposition to the most

1 recent brief.

2 MS. CASEY: Exhibit 4, the State
3 provided it. We provided all the
4 depositions, deposition of Deputy Thomas
5 Arambasich.

6 THE COURT: Okay, it's in that.

7 MR. MAZE: 4, 5, 6 and 7.

8 MS. CASEY: We provided full
9 depositions.

10 THE COURT: You're right. You're
11 right.

12 MR. MARSHALL: So I apologize if it
13 was the State that provided it and not us,
14 but my understanding is, just so we're all
15 on the same page, there were four witnesses
16 who were deposed in connection with the Rule
17 32, and the complete transcript of those
18 deponents have been provided to the Court.

19 THE COURT: That is correct. I'm
20 sorry, I'm just not focused right now.
21 You're right, they are in this multi volume
22 set of exhibits that I've got over here
23 behind the desk.

24 MR. MAZE: If I may suggest how the
25 State generally handles Rule 32's after the

1 hearing is over as far as a scheduling
2 matter, this may make it a lot easier for
3 the Court. What we would typically do in a
4 situation like this is once the Haney
5 deposition is transcribed and submitted by
6 the defense, once that has happened and once
7 a transcript of this week's hearing is
8 transcribed and provided to both parties,
9 once both of those is in, typically the
10 Court would issue an Order that says within
11 30 days the petitioner can file any brief,
12 any post-hearing brief, and proposed Order
13 that he wishes, and then within 30 days of
14 that the State can do the same and then if
15 within --

16 THE COURT: Well, I would like to
17 go ahead and establish that date. We know
18 that the deposition is going to be taken
19 March the 31st, and, you know, it may take a
20 couple of weeks to get the transcript and
21 then, you know, I don't care how much time
22 you take to get it done. I want it to be a
23 reasonable amount of time for you.

24 MR. MARSHALL: I think we'll have
25 the transcript of Dr. Haney by the middle of

1 April, right?

2 MS. WALKER: Right, if not sooner.

3 MR. MARSHALL: And if we could have
4 45 days to file our brief.

5 THE COURT: All right, middle of
6 April and then that puts you to the middle
7 of May, first of June.

8 MR. MARSHALL: That's fine with us.

9 THE COURT: So if you file the
10 defendant's post-hearing brief by June 1,
11 then the State wants how much time?

12 MR. MAZE: If they have 45, we'll
13 take 45. Well, Ms. Casey has trials, so I
14 want to let her speak for herself.

15 MS. CASEY: I have two murder
16 trials this summer that are scheduled to go,
17 in addition to a leave of absence that I
18 will be taking. And I'm going to work on
19 this regardless, but, I mean, it's going to
20 be -- I may have to ask for an extension. I
21 just want to put the Court on notice now
22 that I do have a Capital Murder trial and a
23 murder trial this summer. I intend to
24 return back to work the first of July and I
25 have two trials back to back.

1 THE COURT: Well, let's figure out
2 what the 45 days would be first of all. If
3 you had -- if they filed a June 1 brief and
4 you had 45 days, that puts you over to mid-
5 July.

6 MR. MAZE: We could do 60 and 60,
7 put theirs at mid-June and then that would
8 make ours mid-August.

9 THE COURT: I don't know if they
10 care. Do you want that extra time?

11 MR. MARSHALL: You know, if we get
12 it we'd just -- you know, everybody writes
13 their brief in the last two days.

14 THE COURT: Yeah, I know.

15 MR. MARSHALL: I think we'll be
16 fine with 45 days, especially because I know
17 who will be writing the brief.

18 THE COURT: I don't mind giving the
19 State 60 days. If they only get 45 days,
20 that doesn't mean you're married to 45 days.

21 MR. MAZE: That's fine with us,
22 too. I just want to make sure Ms. Casey has
23 time to do it because she does have the
24 trial.

25 THE COURT: Is August 1st going to

1 work for you?

2 MS. CASEY: I'll make it work.

3 THE COURT: That will be all of
4 June and all of July.

5 MS. CASEY: I'll make it work. I
6 start a trial July the 26th, a murder trial,
7 and then I turn around and start a Capital
8 Murder trial August the 16th that we know
9 for sure will be --

10 THE COURT: Here's what I want to
11 do. I want to leave it set for August the
12 1st. If there is a hardship that you have,
13 I'll be open to considering an extension of
14 that if we need to.

15 MS. CASEY: Okay. I'll do my best
16 to make the deadline.

17 THE COURT: You just need to ask me
18 for the extension and maybe talk to them
19 about it before you call me. But don't wait
20 until the last minute to ask for an
21 extension, if you see there is going to be a
22 need for an extension.

23 MS. CASEY: I should know by June
24 2nd if I'll need the extension.

25 MR. MARSHALL: Just one last thing,

1 too, Judge, and we'll probably put this as
2 the first footnote in our brief, but I would
3 like to say for the record is that our
4 understanding is that this brief should in
5 essence summarize what we understand to be
6 the facts and the law that entitle Mr. Gavin
7 relief on his ineffective assistance of
8 counsel claim. There are numerous claims
9 that we have raised that the Court has
10 already ruled on.

11 THE COURT: That's correct.

12 MR. MARSHALL: And for purposes of
13 appeal, we do not intend to waive any of
14 those claims so that our briefing will be
15 limited to the ineffective assistance of
16 counsel.

17 THE COURT: I understand that and
18 you've actually raised a point that I wanted
19 to discuss on the record. There was one
20 document that I was not able to put my hands
21 on. Never mind. I do have it. So I've got
22 it. I think I maybe over-organized this
23 file.

24 MR. MAZE: Just to put the Court
25 and the defense or petitioner on notice, the

1 State's general practice is in lieu of a
2 brief, what we submit is a proposed Order
3 that addresses all issues in the petition
4 with law and the facts, and we submit it on
5 a disc for the Court, you know, if you want
6 to use any part of it, et cetera, and we
7 would supply the same to the petitioner and
8 we don't have any objection to him creating
9 a proposed Order in the same way and giving
10 it to the Court. We found that works easier
11 for the Court.

12 THE COURT: Well, that's fine. And
13 I will appreciate receiving a proposed
14 Order. I will tell you that I often ask for
15 lawyers to prepare proposed Orders in cases.

16 MR. MAZE: Yes, sir.

17 THE COURT: And I've been doing
18 this for almost 30 years and in 30 years I
19 have probably only signed maybe a half a
20 dozen.

21 MR. MAZE: Understood.

22 THE COURT: So you will spend a lot
23 of time on a proposed Order that I probably
24 will not sign.

25 MR. MAZE: We like that because it

1 shows that you have, I mean, a lot of times
2 we get --

3 THE COURT: Well, I'm sure I'll
4 benefit from it, but I just don't want you
5 to assume that even if I ruled with you on
6 this that I would sign the Order that you
7 submit.

8 MR. MAZE: No, sir, there is no
9 assumption at all, it's just done for the
10 benefit of the Court, it's just what we
11 would propose, it's not anything that we ask
12 the Court to sign wholesale, in fact, we
13 don't. I mean, we ask the Court to review
14 it and come to the Court's own conclusions.

15 THE COURT: And how ever you decide
16 you want to do it, if you want to submit a
17 proposed Order, that will be helpful, also.
18 How ever you decide you want to do it is
19 fine. Your input in whatever form you
20 choose will be helpful. Anything else?

21 MR. MARSHALL: No, Your Honor.

22 THE COURT: Anything else?

23 MR. MAZE: No, sir.

24 THE COURT: We stand adjourned.
25 Thank you.

1 (The proceedings were concluded at
2 this time)
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TO: The Clerk of the Court of Criminal Appeals
 P. O. Box 301555
 Montgomery, Alabama 36130-1555

Fax: (334) 242-4689

Criminal Appeals Case Number CR 10 - 1313

KEITH EDMUND GAVIN **v.** STATE OF ALABAMA
Appellant's Name **Appellee**

On appeal from the:

☒ Circuit Court of
☐ District Court of
☐ Juvenile Court of

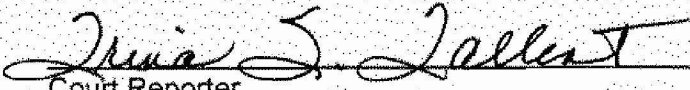
Cherokee County

Trial Court Case Number CC-98-61.60 and CC-98-62.60

Notice of Appeal Date May 24, 2011

I, Trina S. Tallent, certify that I have this date completed and filed with the clerk of the trial court an original and three copies of a true and correct transcript of all proceedings in the above referenced case that were reported by me and were specifically designated by the appellant for inclusion on the Reporter's Transcript Order. The transcript, which is numbered serially in the upper right-hand corner of each page, begins with a copy of the Reporter's Transcript Order and an index of both the exhibits and the testimony of the witnesses. The original transcript concludes with the original of this notice and the copies of the transcript conclude with copies of this notice. The page number appearing in the upper right-hand corner of this certificate is the last page of my portion of the transcript in this case.

Done this the 19th day of July, 2011.


 Court Reporter

FILING AND SERVICE OF THIS FORM: Pursuant to Rule 11(b), A.R.App.P., the court reporter should file a copy of this certificate with the Clerk of the Court of Criminal Appeals and should serve copies of the certificate on counsel for the appellant or the appellant if he or she is not represented by appellate counsel, the attorney general and the district attorney, unless the appeal is from a municipal appeal, in which event a copy of the form should be served on the municipal prosecutor rather than the attorney general and district attorney.

State of Alabama Unified Judicial System From ARAP - 14 Rev. 11 / 91	CERTIFICATE OF COMPLETION AND TRANSMITTAL OF RECORD ON APPEAL BY TRIAL CLERK	Appellate Case Number CR-10-1313
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TO: THE CLERK OF THE COURT OF CRIMINAL APPEALS OF ALABAMA	DATE OF NOTICE OF APPEAL: May 25, 2011
APPELLANT <div style="text-align: center; margin-top: 5px;">Keith Edmund Gavin</div>	
v. STATE OF ALABAMA	

I certify that I have this date completed and transmitted herewith to the appellate court the record on appeal by assembling in (a single volume of _____ pages) (17 volumes of 200 pages each and one volume of 149 pages) the clerk's record and the reporter's transcript and that one copy each of the record on appeal has been served on the defendant and the Attorney General of the State of Alabama for the preparation of brief.

I certify that a copy of this certificate has this date been served on counsel for each party to the appeal.

DATED this 31st day of August, 2011.

/s/ Dwayne Amos

 Circuit Clerk

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